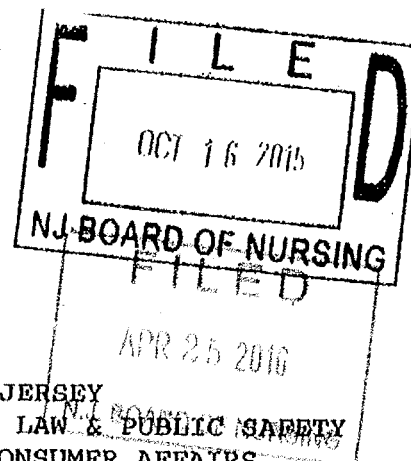


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STATE OF NEW JERSEY  
DEPARTMENT OF LAW & PUBLIC SAFETY  
DIVISION OF CONSUMER AFFAIRS  
STATE BOARD OF NURSING



IN THE MATTER OF THE SUSPENSION  
OR REVOCATION OF THE LICENSE OF

Sylvia Kearney, C.H.H.A.  
Certificate No. 26NH09506900

HOMEMAKER-HOME HEALTH AIDE  
IN THE STATE OF NEW JERSEY

ADMINISTRATIVE ACTION

PROVISIONAL ORDER OF  
DISCIPLINE

☒ FINAL ORDER OF DISCIPLINE  
(Finalized by default  
on April 25, 2016 / 04/25/16)

**FINAL**

This matter was opened to the New Jersey State Board of Nursing (the "Board") upon receipt of information which the Board has reviewed and upon which the following preliminary findings of fact and conclusions of law are made:

FINDINGS OF FACT

1. Sylvia Kearney ("Respondent") is a certified homemaker-home health aide in the State of New Jersey and has been a licensee at all times relevant hereto. (Exhibit A).

2. The Board received a complaint from Respondent's employer, Medex Home Health Centers, indicating that Respondent was impaired while on duty on January 3, 2015. (Exhibit B).

3. The complaint alleges that Respondent was found sitting in the hallway outside a patient's room, "mumbling and incoherent" with a strong smell of alcohol on her breath. With the assistance of other aides, Respondent got up, stumbled back into the patient's room and passed out. Police and agency administrators were then contacted and found Respondent in the patient's bathroom, sitting on the toilet clothed and urinating on herself. The bathroom had wine and broken glass all over the floor. Respondent was uncooperative with the police officers when they arrived. (Exhibit B).

4. The complaint also alleges that when Respondent's husband came to pick her up, he informed the officers that Respondent was taking Vicodin, an antibiotic and a cough suppressant. He stated that he had received a call from Respondent and that she sounded strange and was not making sense. Respondent was transported to the hospital for an evaluation. (Exhibit B).

5. The complaint further alleges that, on January 5, 2015 Respondent spoke with her employer by telephone regarding the incident and Respondent stated she had taken two Vicodin and had

"a sip" of wine, which caused a "reaction." (Exhibit B).

6. On March 5, 2015 Respondent responded to a Demand for Statement Under Oath. Respondent answered "Yes" to the question asking if she was impaired on duty. Respondent stated it was "from earlier sickness" and that she had taken pain medication before she was on duty. She confirmed that she passed out on duty and that she was dizzy and broke a bottle of wine that she was serving to her patient. Respondent stated that she had told her employer that she was sick and could not work but her employer insisted that she work. Respondent denied drinking alcohol on duty, and denied the report that she was found sitting on the toilet, clothed, but urinating through her clothing. (Exhibit C).

#### CONCLUSIONS OF LAW

Certified homemaker-home health aides provide care to some of the most vulnerable members of our society - the infirm elderly. They have unfettered access to the homes, personal possessions, bank accounts and credit cards of their elderly patients. Possible addiction to illegal substances or alcohol raise particular concern as certificate holders who have not obtained appropriate treatment may pose a risk to the safety and security of those individuals entrusted to their care. The complaint by Respondent's employer combined with Respondent's

admission to being impaired while on duty are sufficient indication that Respondent's continued practice as a homemaker-home health aide may jeopardize the safety and welfare of the public such that diagnostic testing and monitoring or psychological evaluation are warranted as a condition of continued certification pursuant to N.J.S.A. 45:1-22(e) and (f) and N.J.S.A. 45:1-21(1).

ACCORDINGLY, IT IS on this 16<sup>th</sup> day of October, 2015, ORDERED that, UPON THE FILING OF A FINAL ORDER OF DISCIPLINE:

1. Respondent's certificate to practice as a homemaker-home health aide will be suspended for a minimum period of one (1) year. Prior to any application for reinstatement, reinstatement Respondent must appear before the Board and demonstrate her compliance with paragraph 2 below.

2. Respondent shall:

- a. Provide the Board with evidence that she is capable of discharging the functions of a certificate holder in a manner consistent with the public's health, safety and welfare and that she is not then suffering from any impairment or limitation resulting from the use of any addictive substance which could affect her practice.
- b. Provide the Board with an in-depth, current evaluation from a licensed clinical alcohol and drug counselor or psychiatrist or psychologist knowledgeable in addiction therapy who is aware of this Provisional Order of Discipline and who has been pre-approved by the Board. Respondent shall provide documentation that she has complied

with all recommendations of the licensed clinical alcohol and drug counselor or psychiatrist or psychologist.

- c. Affirmatively establish her fitness, competence and capacity to re-enter the active practice as a certified homemaker-home health aide within New Jersey.

3. Upon the filing of a FINAL ORDER OF DISCIPLINE, Respondent shall promptly, within 5 (five) days, mail her certificate, wall and wallet version, to practice as a homemaker-home health aide to Twalema Khonje, State Board of Nursing, P.O. Box 45010, Newark, New Jersey 07101.

4. Upon the filing of a FINAL ORDER OF DISCIPLINE, Respondent shall refrain from engaging in the practice as a certified homemaker-home health aide and shall not represent herself as a certified homemaker-home health aide, which includes but is not limited to performing delegated nursing regimens or nursing tasks delegated through the authority of a duly licensed professional nurse, until such time as her certification is reinstated. Any practice in this State as a certified homemaker-home health aide prior to such reinstatement shall constitute grounds for a charge of unlicensed practice.

5. The within order shall be subject to finalization by the Board at 5:00 p.m. on the 30<sup>th</sup> day following entry hereof

unless Respondent requests a modification or dismissal of the above stated Findings of Fact or Conclusions of Law by:

- a) Submitting a written request for modification or dismissal to Twalema Khonje, State Board of Nursing, 124 Halsey Street, Sixth Floor, P.O. Box 45010, Newark, New Jersey 07101.
- b) Setting forth in writing any and all reasons why said findings and conclusions should be modified or dismissed.
- c) Submitting any and all documents or other written evidence supporting Respondent's request for consideration and reasons therefor or offered in mitigation of penalty.

6. Any submissions will be reviewed by the Board and the Board will thereafter determine whether further proceedings are necessary. If no material discrepancies are raised through a supplemental submission during the thirty-day period, or if the Board is not persuaded that the submitted materials merit further consideration, a FINAL ORDER OF DISCIPLINE will be entered.

7. In the event that Respondent's submissions establish a need for further proceedings, including, but not limited to an evidentiary hearing, Respondent shall be notified with regard thereto. In the event that an evidentiary hearing is ordered, the preliminary findings of fact and conclusions of law contained herein may serve as notice of the factual and legal allegations in such proceeding. Further, in the event a hearing

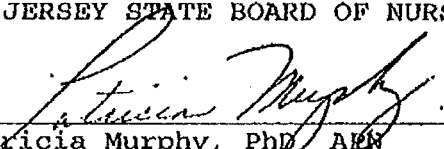
is held and upon review of the record, the Board shall not be limited to the findings, conclusions and sanctions stated herein.

8. In the event that the Board receives no written request for modification or dismissal within 30 days following entry of this Provisional Order of Discipline, without further Board review, all referenced preliminary Findings of Fact and Conclusions of Law and all provisional sanctions or penalties imposed by this Order shall automatically become the Final Decision and Order of the Board. Thereafter, Respondent's failure to comply with any sanction or penalty imposed by this Order shall be considered a violation of a Board Order in contravention of N.J.S.A. 45:1-21 (e) and (h) and N.J.A.C. 13:45C-1.4 and may subject Respondent to additional sanction and/or penalty.

9. The Board reserves the right to initiate disciplinary proceedings based upon any information that Respondent ultimately provides in response to the letter of inquiry or upon any new information the Board receives.

NEW JERSEY STATE BOARD OF NURSING

By:

  
Patricia Murphy, PhD APRN  
President